

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 LEONARDO ESTRADA,

12 Petitioner,

13 v.
14 K. ALLISON, Warden, et al.,

15 Respondent.

Civil No. 10-1901 BTM (BLM)

**ORDER RE: FAILURE TO SATISFY
FILING FEE REQUIREMENT AND
FAILURE TO NAME A PROPER
RESPONDENT**

16 Petitioner, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas
17 Corpus pursuant to 28 U.S.C. § 2254 challenging the outcome of a prison disciplinary hearing.

FAILURE TO SATISFY THE FILING FEE REQUIREMENT

18 Petitioner has failed to pay the \$5.00 filing fee and has failed to move to proceed in forma
19 pauperis. This Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or
20 qualified to proceed in forma pauperis. *See* Rule 3(a), 28 U.S.C. foll. § 2254.

FAILURE TO NAME A PROPER RESPONDENT

21 Review of the Petition reveals that Petitioner has failed to name a proper respondent. On
22 federal habeas, a state prisoner must name the state officer having custody of him as the
23 respondent. *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28
24 U.S.C. foll. § 2254). Federal courts lack personal jurisdiction when a habeas petition fails to
25 name a proper respondent. *See id.*

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1 The warden is the typical respondent. However, “the rules following section 2254 do not
2 specify the warden.” *Id.* “[T]he ‘state officer having custody’ may be ‘either the warden of the
3 institution in which the petitioner is incarcerated . . . or the chief officer in charge of state penal
4 institutions.’” *Id.* (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee’s note). If “a
5 petitioner is in custody due to the state action he is challenging, ‘[t]he named respondent shall
6 be the state officer who has official custody of the petitioner (for example, the warden of the
7 prison).’” *Id.* (quoting Rule 2, 28 U.S.C. foll. § 2254 advisory committee’s note).

8 A long standing rule in the Ninth Circuit holds “that a petitioner may not seek [a writ of]
9 habeas corpus against the State under . . . [whose] authority . . . the petitioner is in custody. The
10 actual person who is [the] custodian [of the petitioner] must be the respondent.” *Ashley v.*
11 *Washington*, 394 F.2d 125, 126 (9th Cir. 1968). This requirement exists because a writ of
12 habeas corpus acts upon the custodian of the state prisoner, the person who will produce “the
13 body” if directed to do so by the Court. “Both the warden of a California prison and the Director
14 of Corrections for California have the power to produce the prisoner.” *Ortiz-Sandoval*, 81 F.3d
15 at 895.

16 Here, Petitioner has incorrectly named “ K. Allison,” as Respondent. In order for this
17 Court to entertain the Petition filed in this action, Petitioner must name the warden in charge of
18 the state correctional facility in which Petitioner is presently confined or the Director of the
19 California Department of Corrections. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir.
20 1992) (per curiam). According to the California Department of Corrections and Rehabilitation
21 website, http://www.cdcr.ca.gov/Facilities_Locator/COR.html, the Acting Warden of California
22 State Prison, Corcoran is Raul Lopez .

CONCLUSION AND ORDER

24 Petitioner must, **no later than November 29, 2010**: (1) pay the filing fee **OR** provide
25 adequate proof of his inability to pay **AND** (2) file a First Amended Petition which cures the

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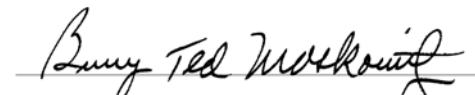
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1 pleading deficiencies outlined in this Order. **Failure to do so will result in dismissal of this**
2 **case. THE CLERK OF COURT IS DIRECTED TO MAIL TO PETITIONER A BLANK**
3 **MOTION TO PROCEED IN FORMA PAUPERIS FORM AND A BLANK FIRST**
4 **AMENDED PETITION FORM.**

5 **IT IS SO ORDERED.**

6 DATED: October 1, 2010

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9 Honorable Barry Ted Moskowitz
United States District Judge

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